# Majlis Daerah Kuala Krai Utara v Sindaya (M) Sdn Bhd

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO D-01–33 OF 2010

B

LOW HOP BING, ALIZATUL KHAIR AND ANANTHAM KASINATHER JJCA

27 OCTOBER 2011

C

*Contract — Offer and acceptance — Whether offer — Owners of buildings destroyed in fire agreed at meeting called by local authority to appoint respondent to redevelop site — Respondent's manager attended meeting and formally told of respondent's selection — Whether local authority's subsequent letter to respondent requesting it to proceed with works as contractor for project amounted to letter of offer — Whether respondent's agreement to carry out project was with building owners and not with local authority*

D

At the appellant's suggestion, the owners of 17 buildings destroyed in a fire formed a committee to look into the redevelopment of the fire-affected site. The committee short-listed tenders received from contractors keen to undertake the redevelopment ('the project') and at a meeting convened by the appellant, a decision was taken to appoint the respondent as the contractor for the project. After the decision was taken, the respondent's manager was invited to join the meeting and he was formally informed the respondent's tender had been accepted. Subsequent to the meeting the appellant informed the respondent by letter that it could commence the project works since it had been appointed as the contractor for the project on the terms and conditions 'as agreed between yourselves (the respondent) and the owners of the buildings'. The High Court held the appellant's letter amounted to a letter of offer to the respondent to carry out work on the project and that the offer was accepted by the respondent in its reply letter thereby giving rise to a valid contract between the parties. The appellant appealed the finding to the Court of Appeal.

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**Held,** allowing the appeal with costs and setting aside the High Court's decision:

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(1) The High Court erred in finding the appellant's letter was a letter of offer. The letter was never intended to be an offer letter as was evident from its third paragraph which stated that the agreement reached at the meeting for the project was effectively between the owners of the buildings and the respondent (see para 7(b)).

I

(2) The appellant was not the owner of any one of the 17 buildings or of the land where the project was to be undertaken. In law, the owner of the land where the building was to be constructed was a necessary party to any

contract for the construction of a building on the land. For that reason, at most, the appellant's letter could only have been written for and on behalf of the owners of the buildings following the agreement reached between the respondent and the owners. As such, the cause of action, if any, was against the owners of the buildings and not the appellant (see para 7(a)).

**[Bahasa Malaysia summary**

Atas cadangan perayu-perayu, pemilik-pemilik 17 bangunan yang musnah di dalam kebakaran membentuk jawatankuasa untuk melihat kepada pembangunan semula kawasan yang terjejas oleh kebakaran tersebut. Jawatankuasa menyenaraikan nama tender terpilih daripada kontraktor-kontraktor yang sangat ingin menjalankan pembangunan semula ('projek') dan pada masa mesyuarat yang diadakan oleh perayu, keputusan telah diambil untuk melantik responden sebagai kontraktor untuk projek tersebut. Selepas keputusan dibuat, pengurus responden dijemput untuk menyertai mesyuarat dan dia secara rasmi diberitahu bahawa tender responden telah diterima. Selepas mesyuarat tersebut perayu memberitahu responden melalui surat bahawa ia boleh memulakan kerja-kerja projek memandangkan ia dilantik sebagai kontraktor untuk projek tersebut atas terma-terma dan syarat-syarat 'as agreed between yourselves (the respondent) and the owners of the buildings'. Mahkamah Tinggi memutuskan surat perayu merupakan surat tawaran kepada responden untuk menjalankan kerja-kerja di projek tersebut dan tawaran tersebut diterima oleh responden dalam surat jawapannya dengan itu membangkitkan kontrak sah di antara kedua-dua pihak. Perayu merayu terhadap keputusan tersebut kepada Mahkamah Rayuan.

**Diputuskan,** membenarkan rayuan dengan kos dan mengenepikan keputusan mahkamah:

(1) Mahkamah Tinggi tersilap dalam memutuskan surat perayu adalah surat tawaran. Surat tersebut tidak pernah bertujuan untuk menjadi surat tawaran seperti yang terbukti daripada perenggan ketiga yang menyatakan bahawa perjanjian yang dicapai pada mesyuarat untuk projek tersebut secara efektif adalah di antara pemilik bangunan dan responden (lihat perenggan 7(b)).

(2) Perayu bukan pemilik salah satu daripada 17 bangunan atau tanah di mana projek dijalankan. Dari segi undang-undang, pemilik tanah di mana bangunan tersebut akan dibangunkan semula adalah pihak yang diperlukan kepada apa-apa kontrak untuk pembinaan bangunan di atas tanah tersebut. Atas sebab tersebut, sekurang-kurangnya, surat perayu hanya boleh ditulis untuk dan bagi pihak pemilik bangunan berikutan perjanjian yang dicapai di antara responden dan pemilik. Oleh itu, kausa tindakan, jika ada, adalah terhadap pemilik bangunan dan bukan perayu (lihat perenggan 7(a)).]

**Notes**

For a case on whether offer, see 3(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 5372.

**Appeal from:** Civil suit No 22–43 of 2000 (High Court, Kota Bharu)

*Wan Jawahir bt Harun (Wan Jawahir & Co) for the appellant.*
*Kitson Foong (Ahmad Zaidi Zainal and Mohd Asyraf with him) (Apandi Ali & Co) for the respondent.*

**Anantham Kasinather JCA (delivering judgment of the court):**

BACKGROUND FACTS

**[1]** A fire in the town of Kuala Krai in the State of Kelantan caused some 17 units of buildings to be partially destroyed and thereafter abandoned by the owners of the same. As the abandoned buildings were unsightly and a source of embarrassment to the town council, the appellant as the local town council responsible for the improvement of buildings encouraged the owners of the buildings to redevelop the site. As there were too many owners for a consensus to be reached on the nature of the redevelopment; the contractor to be appointed to undertake the redevelopment; the terms of the contract etc; the appellant suggested that the owners form a committee to represent their interest. The owners duly obliged and a committee was formed to represent the interest of the owners.

**[2]** The committee was tasked by the appellant with short listing the tenders received from contractors wishing to be appointed to undertake the redevelopment of the site. Following the completion of this short listing exercise by the committee, the appellant convened a meeting on 9 April 2003 to finalise the appointment of the successful contractor. This meeting held at the premises of the appellants was attended by members of the committee and representatives of the appellant. At this meeting, the decision was made by the members of the committee and the representatives of the appellants to appoint the respondent as the contractor to undertake the redevelopment of the 17 buildings ('the project'). The basis for the appointment of the respondent as the contractor was because the price quoted by him was the lowest from the tenders received by the committee, according to the minutes of the meeting of 9 April 2003. Following this decision, the manager of the respondent was invited to join the meeting and formally informed that the respondent was the successful tenderer.

**[3]** The appellant notified the respondent that it had been appointed the contractor for the project vide its letter of 14 April 1997. Since much turns on the contents of this letter of notification, we propose to set out in full the

contents of this letter. This letter from the appellant dated 14 April 1997 addressed to the respondent reads as follows:

> Tuan,
>
> Pembinaan Semula 17 Unit Bangunan Terbakar Di Jalan Sultan Yahya Petra, Kuala Krai
>
> Adalah saya dengan segala hormatnya diarah merujuk kepada perkara di atas.
>
> 2. Sukacita dimaklumkan bahawa Syarikat tuan telah berjaya mendapat kontrak pembinaan bagi 17 unit rumah kedai dua tingkat di Jalan Sultan Yahya Petra, Kuala Krai dengan kos sebanyak RM3,245,000 (12 unit x RM200,000 dan 5 unit x RM205,000) sebagaimana yang telah diputuskan dalam Mesyuarat Pemilik-Pemilik kedai tersebut pada 9hb April 1997 di Bilik Gerakan Majlis Daerah Kuala Krai Utara, Kuala Krai.
>
> 3. Harga kontrak di atas dan syarat-syarat pembinaan adalah sebagaimana yang dipersetujui bersama oleh pihak tuan dan pemilik-pemilik kedai tersebut. Oleh hal yang demikian tuan bolehlah memulakan kerja-kerja awalan bagi memulakan pembinaan projek tersebut.
>
> Sekian, terima kasih.
>
> (Page 359 *Jilid 3 Bahagian C*)

The significance of this letter is that it is the respondent's pleaded case that this letter amounted to an offer from the appellant for the construction of the 17 buildings by the respondent. The respondent claimed to have accepted this offer vide its letter of 23 April 1997 so as to result in a contract between the appellant and the respondent.

**[4]** By its letter of 23 April 1997, the respondent also sought the approval of the appellant to commence building operations purportedly because the building plans had already been submitted to the appellant by the architect for the project. The appellant vide its letter of 6 May 1997 in response to this letter formally informed the respondent that it had no objection to the commencement of the construction and which letter was copied to the owners of the project.

**[5]** The learned trial judge identified seven issues which the learned trial judge considered essential for the determination of the respondent's claim. These issues may be summarised to be as follows:

(a) sama ada surat bertarikh 14 April 1997 adalah suatu tawaran oleh defendan kepada plaintif?

(b) sama ada surat plaintif bertarikh 23 April 1997 adalah membuktikan suatu penerimaan tawaran oleh plaintif?;

(c) sama ada surat bertarikh 14 April 1997 yang dikeluarkan oleh defendan kepada plaintif membentuk suatu ikatan kontrak antara plaintif dengan defendan?

(d) sekiranya wujud kontrak seperti perkara dan di atas, maka sama ada surat bertarikh 14 April 1997 oleh defendan tersebut menunjukkan defendan adalah bertanggungjawab terhadap kontrak tersebut?

(e) sama ada persetujuan defendan untuk memulakan kerja pembersihan tapak menunjukkan defendan mempunyai kuasa terhadap projek tersebut?

(f) sama ada surat bertarikh 14 April 1997 itu bermaksud bahawa defendan mewakili tuan-tuan tanah dalam memberikan projek itu kepada plaintif (sekiranya ada kontrak)?

(g) sama ada surat bertarikh 14 April 1997 dikeluarkan berdasarkan kepada tender atau tidak?

(h) isu ganti rugi akan dibicarakan selepas keputusan sama ada wujud atau tidak tanggungan oleh defendan terhadap plaintif berdasarkan surat bertarikh 14 April 1997.

## DECISION OF THE HIGH COURT

**[6]** We do not propose to deal with all the issues considered by the learned trial judge as central to the outcome of this appeal is the existence of a contract between the appellant and the respondent. The learned trial judge ruled in favour of the respondent as the learned trial judge concluded that the appellant's letter of 14 April 1997 amounted to a letter of offer by the appellant and which offer was capable of acceptance and so accepted by the respondent vide their letter of 23 April 1997 giving rise to a valid contract between the two parties.

## DECISION OF THE COURT

**[7]** With respect, in our judgment, the learned trial judge erred in finding the letter of 14 April 1997 as a letter of offer by the appellant for the following reasons:

(a) His Lordship failed to appreciate that the appellant is not the owner of any one of 17 buildings and of the land where this project was to be undertaken. With respect, in law, the owner of the land where the building is to be constructed is a necessary party to any contract for the construction of a building on the land. For this reason, at the most, the offer letter of 14 April 1997 could only have been written by the

appellant for and on behalf of the owners of the buildings following the agreement reached between the respondent and the owners at the meeting of 9 April 1997. As such, the cause of action, if any, was against the owners of the buildings and not the appellant;

(b) that the letter of 14 April 1997 was never intended to be an offer letter by the appellant is evident from the following words in the said letter:

> 'Harga kontrak di atas dan syarat-syarat pembinaan adalah sebagaimana yang dipersetujui bersama oleh pihak tuan dan pemilik-pemilik kedai tersebut' (p 359 *Jilid 3 Bahagian C*)

With the utmost respect to the learned trial judge, he failed to pay any regard to the contents of para 3 of the letter of 14 April 1997 that the agreement reached at the meeting of 14 April 1997 for the redevelopment of the project was effectively between the owners of the buildings and the respondent; and

(c) counsel for the respondent made much of the fact that the appellant did not have any objection to the commencement of works by the respondent vide its letter of 6 May 1997. The submission being that the absence of any objection can only be due to the existence of a contract between the appellant and the respondent. With respect, in our judgment, nothing turns on the contents of this letter since the appellant is the regulatory body responsible for the approval of plans and authorising the commencement of works in the District of Kuala Krai. Accordingly, the contents of this letter of 6 May 1997 are consistent with its role as the approving authority. Besides, it must be borne in mind that the building plans were submitted by the architect on behalf of the owners of the building. This also explains why the letter of 6 May 1997 was copied to the owners of the building.

**[8]** Accordingly, we allow this appeal with costs and set aside the judgment of the learned High Court judge. We order the respondent to pay costs of RM30,000 to the appellant as costs here and below. The deposit is refunded to the appellant.

*Appeal allowed with costs and the High Court's decision set aside.*

Reported by Ashok Kumar